IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10364 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIKETA NEHUL SHAH

Versus

REGIONAL PASSPORT OFFICER

Appearance:

1. Special Civil Application No. 10364 of 2002

MR PANKAJ A KAPADIA for Petitioner No. 1

MR N.J.SHAH for MR DN PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 16/10/2002

ORAL JUDGEMENT

Rule. Mr. N.J.Shah, learned advocate appears and waives service of notice of rule on behalf of the Respondents/Passport Authority.

2. Looking to the nature of the urgency in the matter, and on the facts and in the circumstances of the

case, by the consent of the learned advocates appearing for the parties, matter is taken up for final hearing today.

3. In this petition which is filed under Article 226 of the Constitution, petitioner has prayed to issue a writ of mandamus or appropriate writ, order or direction to direct the Respondents/Passport Authority to accept the divorce deed and remarriage certificate and issue the passport in the new name of the petitioner after remarriage. As the petitioner is desirous of immigrating to foreign country, petitioner applied for issuance of fresh passport in the prescribed form.

4. On behalf of the Passport Authority, it has been contended that as per the formalities a certificate, issued by the Pramukh of the Samaj of the petitioner to the effect that the divorce has taken place as per the rituals and procedures of the Samaj, is required. The other formality to be completed by the petitioner is to get the divorce deed registered with Sub-Registrar's office and a certificate from the office of Sub-Registrar to that effect is to be submitted. However, if this Court direct the Passport Authority, they will consider the matter in light of the direction issued by this Court.

5. Having considered the submissions advanced by the learned advocates appearing for the parties and on having perusal of the averments made in the memo of the petition, grounds set out therein, and on the facts and in the circumstances emerging from the record of the case, I am of the opinion that this petition deserves to be allowed by issuing appropriate direction to the Respondents/Passport Authority to consider the application of the petitioner afresh and decide the same on the basis of the aforesaid material to be produced by the petitioner including any other material as may be deemed fit by the authority which may be placed before the Respondents/Passport Authority in accordance with law.

6. For the foregoing reasons, petition succeeds and accordingly it is allowed and resultantly, it is hereby directed to the Respondents/Passport Authority to consider the case of the petitioner and to pass appropriate order on the basis of the material which may be placed before the Passport Authority, and in accordance with law. The Respondents/Passport Authority shall take the decision within a period of six weeks from the date of receipt of the writ of this Court provided

the other formalities are fulfilled by the petitioner. However, the petitioner shall pay costs of Rs.2500/- to the Respondents/Passport Authorities since the Passport Authorities cannot be saddled with costs of litigation.

Rule is made absolute to the aforesaid extent.
DS permitted.

(A.M.Kapadia,J)

Jayanti*